

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NORTH DAKOTA**

LeRoy K. Wheeler,

Plaintiff,

vs.

Warden James Sayler, et al.,

Defendants.

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**ORDER ADOPTING REPORT
AND RECOMMENDATION**

Case No. 1:22-cv-038

The Plaintiff, an inmate at the North Dakota State Penitentiary, initiated this *pro se* civil rights action on February 8, 2022. See Doc. No. 1. An amended complaint was filed on March 9, 2023. See Doc. No. 8. After screening the complaint as required by 28 U.S.C. § 1915A, Magistrate Judge Clare R. Hochhalter issued a Report and Recommendation on June 5, 2023, in which he recommended that the Plaintiff's request for court-appointed counsel be denied and the action be dismissed for failure to state claims for which relief may be granted. See Doc. No. 12. The Plaintiff was given until June 30, 2023, to file an objection to the Report and Recommendation. On July 5, 2023, the Plaintiff filed an objection. See Doc. No. 15.

The Court has carefully reviewed the Report and Recommendation, the relevant case law, the Plaintiff's objection, and the entire record, and finds the Report and Recommendation to be persuasive. The Court finds the Plaintiff's objection unpersuasive. The Court **ADOPTS** the Report and Recommendation (Doc. No. 12) in its entirety. The Court **DENIES** the Plaintiff's motion to appoint counsel (Doc. No. 10) and **DISMISSES** the action. The Court further **FINDS** that any appeal would be frivolous, could not be taken in good faith, and may not be taken *in forma pauperis*.

IT IS SO ORDERED.

Dated this 17th day of July, 2023.

/s/ Daniel L. Hovland
Daniel L. Hovland, District Judge
United States District Court